

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 365 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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TRUSTEE OF BRAHMIN PANCH SAMSTA DASHERATH

Versus

DIXIT KESHAVALAL SHRAVANLAL ALIAS DIXIT MAHARAJ  
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Appearance:

MR DF AMIN for Appellants  
MR PC MASTER for Respondent  
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CORAM : MR.JUSTICE J.R.VORA

Date of decision: 31/03/2000

ORAL JUDGEMENT

1. The appellants filed a Regular Civil Suit No. 1680 of 1971 in the Court of learned Civil Judge (SD), Baroda, for the property bearing Survey No. 451 admeasuring 14 gunthas of land at village Dasharath in the District of Baroda against the present respondent

being defendant in the above said suit for a perpetual injunction restraining the defendant from making any construction over suit property. The appellants herein claimed to be the trustees of Brahmin Panch Samasta Dasherath and claimed that the said property was a Trust property. It was further urged that the defendant was allowed to stay in two rooms situated in the suit open land since last two years from the filing of the suit and that the defendant started making construction on the suit land unauthorisedly. The defendant even after requested by the appellants, did not vacate the suit room, instead started making construction over the suit land, for which the defendant had no right, title or interest in the suit property. He was merely allowed by the present appellants - plaintiffs to stay in the said two rooms as a permissible user. The defendant in answer to the above suit, contended that the defendant was the owner of said suit land because the plaintiffs had agreed to sell the said land for Rs. 5,000/- to the defendant for constructing Ambaji Temple over the same and the said oral transaction took place on Vaishakh Sul 10, S.Y. 2025 wherein all the trustees and other leading persons of village gathered and agreed to sell the said land for Rs. 5,000/- and one Ramabhai Punjabhai agreed to pay consideration on behalf of the defendant. It was agreed that the registered sale deed was to be executed after Khatmuhurt ceremony of Ambaji Temple. At that time, the Trust of the Appellants was registered and the suit property was included in the trust. It was further case of the defendant that the two rooms already situated on the said land, were constructed by him incurring heavy expenditure. The two rooms were still to be constructed and incomplete, and idol of Ambaji was to be placed in one of the rooms, and therefore, according to the defendant, he was in possession of the suit property on the basis of the ownership and the plaintiffs had no right to file a suit for the perpetual injunction restraining him from making any construction. It was also alleged that the plaintiffs were not entitled to equitable relief because they had not come with clean hands before the court. It was also urged that the suit filed by the plaintiff was barred by principle of estoppel, delay and laches and acquiescences.

2. After full fledged trial in the above said Civil Suit, vide judgment and decree dated 28th February, 1979, the learned Joint Civil Judge (JD), Vadodara, dismissed the suit of the plaintiff. Being aggrieved, the present appellants filed a Regular Appeal being Civil Appeal NO. 171 of 1979, in the Court of District Judge at Baroda and ultimately this Appeal came to be decided by Third Extra

Assistant Judge at Baroda, vide order dated 18th January, 1982 dismissing the Appeal of the present appellants. Therefore, being aggrieved, this Second Appeal is filed by the original plaintiffs.

3. Learned Advocate Mr. D.F. Amin on behalf of the appellants and learned Advocate Mr. P.C. Master on behalf of the respondent were heard at length. Both the Advocates took this court to the entire record of this Second Appeal.

4. Considering the rival contentions raised and considering the substantial question of law framed by this Court, it appears that so far as this Second Appeal is concerned, the dispute is in narrow compass.

5. The plaintiffs filed the suit for the perpetual injunction only. The suit came to be dismissed by the Trial Court amongst many other reasons, one of the reasons for the Trial Court to uphold the contention of the defendant was that the defendant was the owner in pursuance of oral agreement to sell. But the First Appellate Court did not agree with the Trial Court on this aspect but confirmed the dismissal of the suit on three grounds i.e. (i) the suit was barred by the principle of promissory estoppel, (ii) the suit was delayed and (iii) the plaintiffs did not come to the court with clean hands.

6. On scrutinising the points involved in this Second Appeal, it clearly appears that the approach of the First Appellate Court is correct in deciding the dispute arose between the parties in that particular suit. The suit was filed by the plaintiffs only for the perpetual injunction. On fact, it was decided by both the courts below that the defendant was in possession and was constructing. However, the plaintiffs in the above suit neither asked for any relief for the declaration nor asked relief for the declaration of title nor asked any relief for the possession of the property. The First Appellate Court was correct in holding that the suit of the plaintiffs was required to be dismissed because the suit was barred by promissory estoppel. Inasmuch as the defendant was carrying on construction since long and plaintiffs approached court only after the property was entered into the Register as Trust Property in 1971 while the defendant was in possession since 1969. It was also observed by the First Appellate court that the construction carried out was very well within the knowledge of the plaintiffs and, therefore, the suit for perpetual injunction was barred by promissory estoppel.

The same fact applies for the principle of delay and latches. The First Appellate Court relied on admission of the plaintiffs deposition and came to the conclusion that the plaintiffs were in possession right from 1969. The circumstances were not stated by the plaintiffs before the court and, therefore, the First Appellate Court observed that the plaintiffs did not come with clean hands.

7. But, so far as the question of title was concerned, the First Appellate Court observed that as per the submission of the parties, the present appellants had already filed another suit against the defendant on the basis of the title and for the possession of the suit land and, therefore, the First Appellate Court observed and decided that since when there is a serious dispute with regard to the title of the property, it was not proper for the court, in this particular suit, for the perpetual injunction to decide the title particularly when the proper relief was not asked by the plaintiffs. The Appellate court rightly relegated the parties to decide the title in another suit filed by the plaintiffs for the title and the possession. In this view of the matter, the finding of the First Appellate Court is required to be confirmed because most of the findings of the First Appellate Court are based on the finding of fact. However, in the Second Appeal, the following substantial question of law is framed by this Court.

" Whether a party having a right to purchase under an oral agreement of sale can be said to have any interest" in the property so as party to transfer on the land delivered possession under the oral contract of sale? "

8. According to the submissions made and going through the record, it clearly appears that this substantial question of law in this Second Appeal is not required to be decided for the simple reason that the parties are at lis in other suit filed by the plaintiff based on the title of the suit property and for the vacant possession of the suit property. This Court is not expressing any opinion in this respect because expressing of any opinion in this regard may prejudice the stand taken by either of the parties in the above said suit filed by the plaintiffs on title and the possession of suit property. Parties are at liberty to litigate according to law, the above said other suit based on title filed by present appellants regarding the

suit property. Therefore, suffice it to say that the First Appellate Court as well as the Trial Court rightly dismissed the suit of the plaintiffs for the perpetual injunction and the First Appellate Court rightly did not enter into the merits of the issue of title between the parties which is being examined by the competent court in the other suit which is filed by the plaintiffs as aforesaid.

9. In view of the matter and subject to the above said discussion, this Second Appeal is required to be dismissed and the same is dismissed with no order as to costs. The ad interim relief granted in Civil Application No. 3895 of 1982 also stands vacated.

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